IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME-TAX APPLICATION NO. 4 OF 1996

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
APRIL 21, 2007.

Heard Shri Parchure, learned counsel for the appellant and Shri Dewani, learned counsel for the respondent.

This application filed by the revenue under Section 256(2) of the Income-tax Act, 1961, was admitted on the following questions of law.

“1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in deciding an appeal on the question of interest alone even though judicial pronouncements hold such an appeal to be not maintainable ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the department has no jurisdiction to charge interest under section 234A and 234B of the Income-tax Act ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that in view of assessee's request to adjust the cash available with the department the assessee cannot be held responsible for not paying the advance tax inspite of the provisions of Section 132B of the Income-tax Act, 1961 ?"

The Assesment Year involved herein is Assessment Year 1990-91.

In this case the dispute pertains to deleting of interest levied under Section 234A and 234B of the Income-tax Act, 1961. In this case, there was search and seizure at the residential and business premisses of the assesee and its sister concerns on 22.1.1990 wherein cash amounting to Rs.8,35,800/- was seized. The assessee declared an amount of Rs. Two lakhs as undisclosed income under Section 132(4) of the Act. The Assessee was required to pay advance tax of Rs.5,91,561/- against which only a sum of Rs.90,000/- was paid. The assessee filed a letter with the department on 30.3.1990 requesting that the cash seized by the department should be adjusted against the advance tax. Admittedly,

no such adjustment was made. Thereafter the assessee filed return of income and the same was processed under Section 143(1) and interest has been levied under Sections 234A and 234B of the Income-tax Act, 1961. The Tribunal has deleted the interest on the ground that once the assessee had requested the department to adjust the amount lying with the department, the Assessing Officer ought to have adjusted the amount towards advance tax and having failed to do so, the assessing officer was not justified in levying interest under Section 234A and 234B of the Act. In fact this Court has in the case of CIT vs. Pandurang Dayaram Talmale, reported at (2004) 135 Taxman 193 held that in such circumstances, interest under Section 234A and 234B cannot be levied.

In this view of the matter, since the questions raised are already answered by this Court, the application filed by the revenue is dismissed. Rule discharged. No costs.

JUDGE **JUDGE**

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